

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

ROBERT EARL LEATHERBERRY,

Petitioner,

v.

ORDER

Criminal File No. 22-cv-2699 (MJD/ECW)

JESSE PUGH, WARDEN,

Respondent.

Petitioner Robert Earl Leatherberry is *pro se*.

Edwin W. Stockmeyer, III, Matthew Frank, Assistant Attorneys General,
Jonathan D. Holets, St. Louis County Attorney's Office, Counsel for Defendant.

This matter is before the Court on the Report and Recommendation of United States Magistrate Judge Elizabeth Cowan Wright dated November 1, 2022. (Doc. 2.) No objections to the Report and Recommendation have been filed in the time period permitted by the Local Rules.

However, on January 30, 2023, Petitioner filed a "Motion for Relief" pursuant to Federal Rule of Civil Procedure 60 asking the Court reconsider its "judgment" found in the Report and Recommendation. (Doc. 5.) Petitioner

cannot raise a Rule 60 motion because a report and recommendation does not constitute a “final judgment, order, or proceeding.” Fed. R. Civ. P. 60(b)(2).

Even if the Court liberally construes Petitioner’s Motion for Relief as an objection to the Report and Recommendation, it still fails for at least two reasons. First, the objection is untimely given that Petitioner filed it well outside of the 14 day window for serving objections under District of Minnesota Local Rule 72.2(b)(1). Second, Petitioner does not identify any portion of the Report and Recommendation with which he disagrees and instead merely raises new arguments. See Ridenour v. Boehringer Ingelheim Pharm., Inc., 679 F.3d 1062, 1067 (8th Cir. 2012) (holding that “[t]he district court properly refused to consider [appellant's] argument ... because th[e] argument was not presented first to the magistrate judge”).

Accordingly, based on the foregoing and the files, records, and proceedings herein, **IT IS HEREBY ORDERED THAT:**

1. The Report and Recommendation (Doc. 14) is **ADOPTED**;
2. Petitioner’s Petition for a Writ of Habeas Corpus (Doc. 1) is **DENIED**; and
3. Petitioner’s Motion for Relief (Doc. 5) is **DENIED**;
4. This case is **DISMISSED**.

5. A Certificate of Appealability shall not be issued.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: February 2, 2023

s/Michael J. Davis

Michael J. Davis

United States District Court